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Circuit Court of the United States, Southern District of New York. In Equity.

FREDERICK HUNT AND OTHERS v. A. J. JACKSON.

Where there is no conflict with the claims of domestic creditors, the assignees of a foreign bankrupt may sue in the United States courts for property of their bankrupt.

DEMURRER to a bill in equity. The petitioners were citizens of England, and are assignees in bankruptcy of one Goldring, an insolvent merchant of London. The respondent was a citizen of the state of New York, residing in the city of New York.

The material allegations of the bill, which were admitted by the demurrer, are as follows:—

That the bankrupt, Goldring, before his bankruptcy, carried on business as a merchant in London, and that on the 21st of April 1864 he had consigned to the respondent, a merchant in New York, an invoice of diamonds of the value of 1227*l.* 12*s.* 6*d.* for sale on commission, which diamonds duly came into the respondent's possession at New York.

That on the 8th of August 1864, at London, Goldring was, in the Court of Bankruptcy, duly adjudicated a bankrupt, and that on the 30th day of the same month the petitioners were appointed creditors' assignees, whereby the bankrupt's estate became vested in them.

That on the same day one Henry Honey, of London, was, at a meeting of the creditors, appointed manager to collect and wind up the estate of the bankrupt.

That on the first day of September 1864 Honey wrote to the respondent, on behalf of these petitioners, requesting him to remit the proceeds of the diamonds sold, and return those unsold.

That on the 30th of September 1864 the respondent wrote Honey in reply that all the diamonds remained unsold, and that he would return them as Honey might direct on receiving the amount of his outlay and expenses, amounting, as he said, to 264*l.* 14*s.* 4½*d.*

No account of outlay or expenses was rendered. The petitioners have repeatedly requested an account, but the respondent has omitted to render it.

On these facts the petitioners asked for an account and disco-

very of the expenses, and that upon payment to the respondent of such a sum as might be found to be justly due him for expenses, &c., on account of the diamonds, he might be ordered to surrender them to the petitioners.

The ground of demurrer was, in substance, that the petitioners as assignees under a foreign bankrupt law, had no legal capacity to institute and maintain this suit.

A. J. Vanderpoel and *E. Blankman*, in support of the demurrer.—I. The facts set forth in the bill of complaint do not establish any title to the diamonds, or any right to prosecute the defendant therefor. The complainants have no standing in court. Their appointment as creditors' assignees did not confer on them title to goods which at the time were out of the territory or jurisdiction of the court from which they received their appointment: *Harrison v. Sterry*, 5 Cranch 289; *Booth v. Clark*, 17 How. (U. S.) 322, 337; *Upton v. Hubbard*, 28 Conn. 274; *Cleve v. Mills*, 1 Cook B. L. 243; *Waring v. Knight*, Id. 307; *La Chevalier v. Lynch*, Doug. 170 (A. D. 1779); *Holmes v. Remsen*, 20 Johns. 229, overruling s. c., 4 Johns. Chanc. 460; *Blake v. Williams*, 6 Pick. 286; *Ingraham v. Geyer*, 13 Mass. 147; *Abraham v. Plestero*, 3 Wend. 538; *Johnson v. Hunt*, 23 Id. 87; *Mosselman v. Caen*, 34 Barb. 66; *Plestero v. Abraham*, 1 Paige 236; Am. Law Jour. N. S. 294, cited 6 Barb. 99 n.; *De Witt v. Burnett*, 6 Barb. 89; *Hoyt v. Thompson's Ex'r.*, 19 N. Y. 207, 224, 225.

II. The course pointed out by Lord KAMES seems to be the only one which can be adopted to vest the title in the assignees, and enable them to assert that title: Lord Kames's Prin. of Equity (4th ed.) 574.

III. If it is to be regarded merely as a question of legal assertion of title, the plaintiffs cannot sustain this action: *Morrell v. Dickey*, 1 Johns. Chan. R. 153; *Williams v. Storrs*, 6 Id. 353; *Campbell v. Tousey*, 7 Cow. 68; *Robinson v. Crandall*, 9 Wend. 426; *Parsons v. Lyman*, 20 N. Y. 103; *Britton v. Valentine*, 1 Curtis's Cir. Ct. R. 168, 174; *Attorney-General v. Bowers*, 4 M. & N. 171; *Same v. Dimond*, 1 C. & Jer. 356; *Stearns v. Bernhaus*, 5 Greenl. 261; *Thompson v. Wilson*, 2 N. H. 291; *Newton v. Bronson*, 13 N. Y. 587; *Booth v. Clark*, 17 How. 322, 337; *Blake v. Williams*, 6 Pick. 286, 313, 314.

IV. The complainants not having title to the subject of the action, cannot maintain this bill. They have no right to the discovery asked for. They have no right to call in question the amount of the lien, or to ask this defendant to account to them, or surrender the property to them.

There is no privity between the complainants and defendant; his liability is to Goldring—Goldring can come at any time and demand the property and the account: *Abraham v. Plestero*, 3 Wend. 538; Story's Eq. Pl. 728.

C. C. Langdell and *E. B. Merrill*, *contrà*.—I. The respondent presents a case wholly destitute of merit. He is certainly liable to account to some one, and the complainants are the only persons in the world who have any right to call him to account. His object in interposing this demurrer is to avoid accounting to any one, and thus to enforce the extortionate demand contained in his letter annexed to the bill of complaint.

II. We admit that the assignment in bankruptcy under which the complainants claim, has no force *proprio vigore*, and that it must be indebted for such force as it may have, entirely to the comity of this state.

This disposes of a large portion of the authorities cited for the respondent.

III. We also admit that this comity will not be extended so far as to deprive our own citizens of such remedies as our laws may afford to recover their debt.

This disposes of nearly all the other authorities cited for the respondent.

IV. The comity of this state will permit the assignment in question to have full effect upon the property of the bankrupt here at the time of the assignment, except so far as it may conflict with the rights of our own citizens. This is the rule declared in the third maxim of Huberus (Story's Confl. of Laws 929); sustained by the authority of Story (*Ibid.*, § 938, 420); fully recognised by the Supreme Court of the United States (13 Peters 589), and established as the law of this state by the conclusive authority of the Court of Appeals.

The case of *Hoyt v. Thompson*, 1 Seld. 420, is precisely in point. It was an equity case, like the present; as in the present case, the defendants demurred to the bill, and the court unani-

mously overruled the demurrer upon the *sole* ground, that the complainants' title, which was under a foreign statutory assignment, was good *as against the debtor*, and so long as it did not conflict with the claims of *creditors, or bonâ fide purchasers in this state*: 1 Seld. 356, 357, 338, 344. The case came again before the court (19 N. Y. 207), when the previous decision was upheld (pp. 224, 226).

V. The case 1 Selden 420 renders it unnecessary to advert to the earlier cases in this state, and also shows that the *dictum* in *Mosselman v. Caen*, 34 Barb. 66, is not law. The case of *Willets v. Waite*, 25 N. Y. 577, is in entire harmony with the views urged by us. The *dictum* in *Harrison v. Sterry*, 5 Cranch 302, is merely to the effect that a foreign bankrupt law has no effect here *proprio vigore*, which we have admitted: Story's Conf. of Laws, § 421; 1 Seld. 344, per RUGGLES, C. J. The case of *Booth v. Clark*, 17 How. 326, is not in point. That was the case of a *receiver in equity*, and it was expressly distinguished from the case of a statutory assignee.

VI. The case of foreign executors and administrators is not analogous to the present. The property of a person deceased is *in custodia legis* from the very moment of his death, until it is duly administered under the law of the state where it is found; and that is the reason why a foreign executor or administrator cannot sue in this state; he must take out letters here.

SHIPMAN, J.—The right of foreign assignees in bankruptcy to maintain suits in the courts of this country, and the extent of that right, if any exists, has been repeatedly and elaborately discussed both by elementary writers and in judicial opinions. Great diversity of views has been expressed, and different results reached in different cases. No advantage would be gained by a rehearsal of these discussions here. In nearly all the cases where the rights of the foreign assignees have been contested, there has been a conflict between their alleged rights and the claims of other parties, citizens or residents of our own country, or aliens pursuing remedies in our own courts, against the assets of the bankrupt. But in the language of Mr. Justice STORY, in his Conflict of Laws, § 420: "In most of these cases in which assignments under foreign bankrupt laws have been denied to give title against attaching creditors, it has been distinctly admitted that

assignees might maintain suits in our courts under such assignments for the property of the bankrupt. This is avowed in the most unequivocal manner in the leading cases in Pennsylvania and New York already cited, and it is silently admitted in those of Massachusetts."

This statement of the law is cited and concurred in by RUGGLES, C. J., in *Hoyt v. Thompson*, 19 N. Y. 207, decided by the New York Court of Appeals in 1851; and PAIGE, J., in an opinion delivered in the same case, remarks: "Where neither the rights of domestic creditors, or of foreign creditors proceeding against the property under our laws, are involved, the foreign assignee may be permitted to sue in our courts, for the benefit of all the creditors, on principles of national comity, without a surrender of the principle that a foreign statutory assignment does not operate a transfer of property in this state."

The result of the cases was accurately stated by Mr. Justice STORY, and citations might be multiplied from judicial opinions, which, while they deny the right of the foreign assignee where it conflicts with the claims of creditors seeking the aid of our own courts, almost invariably concede his capacity to sue as the representative of the bankrupt to the same extent which the latter could have done if no bankruptcy had taken place. This, as already shown, was evidently the judgment of the New York Court of Appeals when the case of *Hoyt v. Thompson* was decided.

The only doubt which has been raised as to the correctness of this view of the law, so far as we know, has originated from the remarks of the judges in the cases of *Mosselman v. Caen*, 34 Barb. 66, and in *Willetts v. Waite*, 25 N. Y. Court of Appeals 377. But the former case was disposed of on other ground. The latter followed *Hoyt v. Thompson*, and as an authority it goes no further than that case. (See Judge ALLEN's opinion, p. 587.)

It is true that the same judge (p. 586), after stating that "the rule in the state and in the United States is, that in cases of assignment by operation of law, the assignees are in the same situation as the bankrupt himself in regard to foreign debts—they take subject to every equity, and subject to the remedies provided by the law of the foreign country where the debt is due, and the property is situated," adds: "The reasoning of our

courts would, doubtless, carry the rule further, and prohibit assignees under foreign bankrupt laws from suing in our courts." The rule has never been carried to this point by the courts of New York, in any decision where the precise question was necessarily involved. We certainly shall not lead the way in that direction, and should hesitate somewhat before we followed.

The demurrer is overruled with costs.

Supreme Court of Illinois.

TAYLOR v. THOMPSON ET AL.

Where the constitution provides that the corporate authorities of counties, townships, school-districts, cities, towns, and villages, may be vested with power to assess and collect taxes for corporate purposes, such taxes to be uniform in regard to persons and property within the jurisdiction of the body imposing the same, and that the specification of the objects and subjects of taxation shall not deprive the General Assembly of power to require other objects and subjects to be taxed in such manner as may be consistent with the principles of taxation fixed in the constitution, an Act of the General Assembly authorizing the towns in certain counties therein named to levy a tax to pay bounties to persons who should thereafter enlist or be drafted into the army of the United States, a vote of the people of such towns having been first taken, is not unconstitutional.

The opinion of the court was delivered by

LAWRENCE, J.—On the 5th of February 1865 the legislature passed a law (page 102, Probate Laws of 1865), authorizing the towns in certain counties therein named, to levy a tax to pay bounties to persons who should thereafter enlist or be drafted into the army of the United States, a vote of the people of the township being first taken. The people of the township of Odell, in the county of Livingston, voted a tax under this law, and the appellant, alleging that he was a non-resident of the township, but owning property there, filed a bill to enjoin the township officers from its collection. The tax is resisted on the ground that it was unconstitutional.

The fifth and sixth sections of article 9 of the constitution are as follows:—

"5. The corporate authorities of counties, townships, school-districts, cities, towns, and villages, may be vested with power to